



Billing Code 6355-01-P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1130

[Docket No. CPSC-2018-0018]

Amendment to Requirements for Consumer Registration of Durable Infant or Toddler Products

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: In 2009, the Consumer Product Safety Commission (CPSC) fulfilled a statutory requirement in the Consumer Product Safety Improvement Act of 2008 (CPSIA) to issue a rule requiring manufacturers of durable infant or toddler products to establish a consumer registration program. The Commission is now finalizing an amendment to the definition of “durable infant or toddler product” in the rule to include the full statutory definition; clarify that the scope of each listed product category is further defined in the applicable mandatory standard; clarify listed product categories using the product name in the applicable mandatory standard; and clarify the scope of the infant carriers and bassinets and cradles product categories.

DATES: *Effective Date:* The rule will become effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Compliance Date for Contoured Changing Pads: Contoured changing pads, a subcategory of baby changing products in § 1130.2(a)(14), must comply with this rule starting on September 24, 2020.

FOR FURTHER INFORMATION CONTACT: Keysha L. Walker, Compliance Officer, Office of Compliance & Field Operations, Regulatory Enforcement Division, Consumer Product

Safety Commission, 4330 East West Highway, Bethesda, MD 20814; 301-504-6820, E-mail: kwalker@cpsc.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

Section 104 of the CPSIA is the Danny Keysar Child Product Safety Notification Act. Section 104 of the CPSIA requires that for “durable infant or toddler products,” the CPSC must (1) issue a mandatory rule for each product based on the applicable voluntary standard, and (2) issue a rule requiring consumer registration for such products. 15 U.S.C. 2056a(b) and (d).¹ In 2009, the Commission issued a regulation to implement the second requirement, *i.e.*, that manufacturers provide a means for consumers to register “durable infant or toddler products” so that consumers can receive direct notification in the event of a product recall. The rule is codified at 16 CFR part 1130, Requirements for Consumer Registration of Durable Infant or Toddler Products (part 1130, or the consumer registration rule).

The two aspects of section 104, consumer registration and product standards, are both based on the definition of “durable infant or toddler product” set forth in section 104(f) of the CPSIA: “durable products intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.” The statute lists 12 product categories included within the definition, such as cribs, toddler beds, high chairs, strollers, and swings. In a 2009 rulemaking, the Commission explained that the list of products in section 104(f), and codified in the Commission’s consumer registration rule in 16 CFR 1130.2, is not static. At that time, the

¹ Since 2009, the Commission has issued final rules for 23 durable infant or toddler products. Mandatory standards for durable infant or toddler products are codified in 16 CFR parts 1215 through 1235, and parts 1237 and 1238. Currently, part 1236 is reserved for Inclined Infant Sleep Products, a proposed rule that has not been finalized.

Commission added six product categories to the 12 listed in the CPSIA. 74 FR 68668, 68669 (Dec. 29, 2009).

On October 9, 2018, the Commission issued a notice of proposed rulemaking (NPR), proposing to make the following changes to part 1130 to clarify the scope of products covered by the rule:

- State the full statutory definition of “durable infant or toddler product” in section 104(f)(1);
- Specify that the listed product categories are further defined in the applicable mandatory standards;
- List “sling carriers,” “soft infant and toddler carriers,” “handheld infant carriers,” and “frame child carriers” as a subset of infant carriers, to avoid confusion regarding whether these products are subject to the consumer registration rule, and to reflect each product category using the name of the applicable mandatory standard;
- Clarify that “bedside sleepers” are a subset of bassinets, to avoid confusion regarding whether bedside sleepers are subject to the consumer registration rule, and to reflect the product name used in the mandatory standard; and
- Revise the term “changing tables” to “baby changing products,” to reflect the product name used in the mandatory standard.

83 FR 50542. After reviewing the comments, the Commission is finalizing this rule, without modification.

II. Response to Comments

CPSC received seven comments on the NPR. Only one comment addressed a substantive issue, while all of the remaining comments generally support the concept of the consumer

registration rule, and support amending the definition of “durable infant or toddler product” to clarify the scope of products subject to the rule. The Commission is not making any changes in the final rule based on the comments received. Below we summarize and respond to the substantive comment on the proposed rule.

Comment – One commenter disagreed with the proposed 1-year effective date for contoured changing pads, stating that many of the manufacturers make other durable infant or toddler products and have registration programs in place. The commenter opines that because of technological advances, product registration programs should take no longer than 6 months to implement, even if no program is in place. The commenter recommended an effective date for contoured changing pads that is 6 months after publication of the final rule.

Response – The Commission agrees that many manufacturers of contoured changing pads make other products subject to the consumer registration rule, and therefore, these manufacturers are likely to have an established consumer registration program. However, the final rule for baby changing products identified 25 firms that supply only contoured changing pads and no other changing products. At least 13 of these 25 firms are not otherwise in the durable infant and toddler product market and are unlikely to have an existing consumer registration program. The commenter provided no information, and we have none, to demonstrate that these 13 firms have established a consumer registration program since issuance of the rule for changing products. Additionally, the baby changing products rule (16 CFR part 1235) went into effect on June 26, 2018, a year after publication of the final rule. For these reasons, the rule provides a 12-month effective date for a consumer registration program for contoured changing pads, consistent with previous effective periods for new products subject to the consumer registration requirement in part 1130.

III. Description of the Final Rule

A. Definition

The final rule updates the definition of “durable infant or toddler product” in 16 CFR 1130.2(a) to state the full statutory definition of “durable infant or toddler product” and to clarify that the scope of the product categories listed can be found in the applicable mandatory standard.

B. Product Categories

The final rule updates the description of product categories subject to the rule by listing the name of each product category that aligns with the name of the product category used in the applicable voluntary or mandatory standard.² Furthermore, to provide information on the scope of the products covered by a product category, the final rule states that the scope of each product category is further defined in the applicable mandatory standard.

1. Infant Carriers

Section 104(f)(H) of the CPSIA lists “infant carriers” as a product category included in the term “durable infant or toddler products.” ASTM International has four separate voluntary standards for infant carriers, and the Commission has now issued four separate mandatory standards, one for each subtype of infant carrier:

- 16 CFR part 1225, Hand-Held Infant Carriers
- 16 CFR part 1226, Soft Infant and Toddler Carriers
- 16 CFR part 1228, Sling Carriers
- 16 CFR part 1230, Frame Child Carriers.

² Some products may be listed in part 1130 before the Commission issues the corresponding mandatory standard. In those cases, the Commission will list the product category as defined in the current voluntary standard, which typically provides specificity about the scope of the product category.

Although the Commission added “Infant Slings” to the list of products in 16 CFR § 1130.2(a) when finalizing the 2009 consumer registration rule, the registration rule does not list the other sub-categories of infant carriers. To clarify that all four types of infant carriers are subject to the consumer registration requirement, the final rule amends § 1130.2(a)(8) to state: “Infant carriers, including soft infant and toddler carriers, hand-held infant carriers, sling carriers, and frame child carriers.” The final rule removes “infant slings” as a separate product category in 16 CFR 1130.2(a)(18), and changes the product name from “infant slings” to “sling carriers,” to align with the name of the mandatory rule in part 1228.

2. Bedside Sleepers

Currently, the product “bedside sleepers”³ is not listed in part 1130. However, when the Commission issued a mandatory standard pursuant to section 104(b) of the CPSIA for bedside sleepers (codified at 16 CFR part 1222), the Commission considered bedside sleepers to be a subset of “bassinets and cradles.” 79 FR 2581, 2583 (Jan. 15, 2014). To resolve any confusion about whether bedside sleepers are subject to part 1130, the final rule revises § 1130.2(a)(12) to state: “Bassinets and cradles, including bedside sleepers.”

3. Changing Tables

Currently, “changing tables” is listed as a durable infant or toddler product in 16 CFR 1130.2(14). However, the Commission’s standard for these products is called “Safety Standard for Baby Changing Products,” codified at 16 CFR part 1235.⁴ CPSC’s standard covers products that are included in the scope of the voluntary standard on which it is based, ASTM F2388 – 18, *Standard Consumer Safety Specification for Baby Changing Products for Domestic Use*.

³ A bedside sleeper is a bassinet-type product, intended to provide a sleeping environment for an infant up to approximately 5 months of age, or when a child begins to push up on his or her hands and knees, whichever comes first. These products are designed to be secured to an adult bed, for the purpose of having a baby sleep in close proximity to an adult.

⁴ The final rule for baby changing products was published on June 26, 2018, and became effective on June 26, 2019.

Accordingly, CPSC’s standard includes changing tables, changing table accessories, contoured changing pads, and add-on changing units. The final rule revises § 1130.2(a)(14) to use the term “baby changing products” to be consistent with the Commission’s mandatory standard.

III. Effective Date and Compliance Date

The Administrative Procedure Act generally requires that the effective date of a rule be at least 30 days after publication of the final rule. The final rule takes effect 30 days after publication, but has a different compliance date for contoured changing pads, as follows.

A. Thirty-Day Effective Date

Most of the changes in the final rule are clarifications to the definition of “durable infant or toddler product” to state the full statutory definition, and to identify more clearly product categories that already are subject to the consumer registration rule (*i.e.*, the statutory definition, infant carrier list, and bedside sleepers). Because these revisions clarify the text of the rule and do not impose new burden on any manufacturer, the final rule has a 30-day effective date for the addition of the statutory language in § 1130.2(a), and for the clarifications to product categories in sections 1130.2(a)(8), (a)(11), and (a)(12).

B. Twelve-Month Compliance Date for Contoured Changing Pads

For the reasons stated in the NPR and section II of this preamble, the final rule has a 12-month compliance date for contoured changing pads. The other types of “baby changing products” (changing tables, changing table accessories, and add-on changing units) have all been required to be in compliance with part 1130 since December 29, 2010, under the previously listed category “changing tables.” 74 FR at 68669. Therefore, the 12-month compliance date applies only to contoured changing pads.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that agencies review a proposed rule and a final rule for the rule's potential economic impact on small entities, including small businesses. Section 604 of the RFA generally requires that agencies prepare a final regulatory flexibility analysis (FRFA) when promulgating final rules, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 104(d)(1) of the CPSIA, however, the provision that establishes the requirement for a consumer registration rule, the RFA does not apply when promulgating a rule under this provision. Consequently, the Commission has not prepared an FRFA and no certification is necessary. We note that the amendment mostly provides clarifications that would not have any economic impact. Providing a longer (12 month) compliance date for the one product that has not been subject to the registration rule, contoured changing pads, should reduce the economic impact on manufacturers of those products.

V. Environmental Considerations

The Commission's regulations address whether the agency is required to prepare an environmental assessment or an environmental impact statement. Under these regulations, certain categories of CPSC actions normally have "little or no potential for affecting the human environment," and therefore, they do not require an environmental assessment or an environmental impact statement. 16 CFR 1021.5. This final rule falls within the categorical exclusion to prepare an environmental impact statement.

VI. Paperwork Reduction Act

Section 104(d)(1) of the CPSIA excludes this rulemaking from the requirements of the Paperwork Reduction Act, 44 U.S.C. sections 3501 through 3520. Consequently, no Paperwork Reduction Act analysis is necessary.

VII. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that when a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a standard or regulation that prescribes requirements for the performance, composition, contents, design, finish, construction, packaging, or labeling of such product dealing with the same risk of injury unless the state requirement is identical to the federal standard. The Commission's authority to issue this consumer registration rule is section 16(b) of the CPSA, 15 U.S.C. 2065(b). Accordingly, this rule is not a consumer product safety standard, and the preemption provision of section 26(a) of the CPSA does not apply to the Commission's final rule.

VIII. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801-808) states that, before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The submission must indicate whether the rule is a "major rule." The CRA states that the Office of Information and Regulatory Affairs (OIRA) determines whether a rule qualifies as a "major rule."

Pursuant to the CRA, OIRA designated this rule as not a "major rule," as defined in 5 U.S.C. 804(2). Additionally, to comply with the CRA, the Office of the General Counsel will submit the required information to each House of Congress and the Comptroller General.

List of Subjects

16 CFR Part 1130

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission amends Part 1130 of Title 16 of the Code of Federal Regulations as follows:

PART 1130 – REQUIREMENTS FOR CONSUMER REGISTRATION OF DURABLE INFANT OR TODDLER PRODUCTS

1. The authority citation for part 1130 continues to read as follows:

Authority: 15 U.S.C. 2056a, 2065(b).

2. Amend § 1130.1 by revising the last sentence in paragraph (c) to read as follows:

§ 1130.1 Purpose, scope, and effective date.

* * * * *

(c) * * * Compliance with this part 1130 shall be required on September 24, 2020 for contoured changing pads (a type of baby changing product). The rule shall apply to durable infant or toddler products, as defined in § 1130.2(a), that are manufactured on or after those dates.

3. Amend § 1130.2 by revising paragraphs (a) introductory text, (a)(8), (11), (12), (14), (17), and removing paragraph (a)(18)

§1130.2 Definitions.

(a) *Definition of Durable Infant or Toddler Product* means the following products intended for use, or that may be reasonably expected to be used, by children under the age of 5 years. The listed product categories are further defined in the applicable standards that the Commission issues under section 104(b) of the Consumer Product Safety Improvement Act of 2008, and include products that are combinations of the following product categories:

* * * * *

(8) Infant carrier, including soft infant and toddler carriers, hand-held infant carriers, sling carriers, and frame child carriers;

* * * * *

(11) Swings;

(12) Bassinets and cradles, including bedside sleepers;

* * * * *

(14) Baby changing products;

* * * * *

(17) Bed rails.

Alberta E. Mills,
Secretary, Consumer Product Safety Commission.

[FR Doc. 2019-20049 Filed: 9/23/2019 8:45 am; Publication Date: 9/24/2019]